

FACTUAL HISTORY

On December 6, 2005 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained a left shoulder condition due to the repetitive lifting, pushing and pulling required by her job. She indicated that she first became aware that factors of her employment were contributing to her left shoulder condition on or about December 8, 2004. OWCP accepted appellant's claim for left shoulder rotator cuff tear, disorder of bursae and tendons in the left shoulder and localized primary osteoarthritis of the left shoulder. Appellant stopped work on December 8, 2004 and did not return. She retired from the employing establishment effective April 16, 2006.

On August 24, 2009 appellant filed a Form CA-7, claim for compensation, for the period December 8, 2004 to April 8, 2006. OWCP paid her disability compensation for periods beginning December 1, 2005. The subject of the present appeal is appellant's claim for disability from December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.

Appellant submitted a November 1, 2005 report from Dr. Jerome Ciullo, an attending Board-certified orthopedic surgeon, who stated that she should consider such future treatments as surgery, physical therapy and activity modification. In reports dated December 1, 2005, January 19, March 2 and April 11, 2006, Dr. Ralph B. Blasier, an attending Board-certified orthopedic surgeon, recommended various periods of disability. None of the recommended disability periods covered the period December 8, 2004 to November 30, 2005.

In a September 8, 2009 report, Dr. Blasier stated that he first saw appellant on December 1, 2005 and therefore he had no direct knowledge of her condition before that date. He noted that, based on her history, appellant's condition from December 8, 2004 to April 8, 2006 was stable with restrictions of no over-shoulder work, no repetitive or forceful pushing, pulling or reaching, and no heavy lifting more than 10 pounds occasionally or 5 pounds frequently. Appellant reported to Dr. Blasier that her supervisor told her that she was hired as a mail processing clerk, a job that required lifting 70 pounds, and that her supervisor further advised that if she could not do that job there was no work for her at the employing establishment. Dr. Blasier posited that therefore she was not employable during the period December 8, 2004 to April 8, 2006 for practical purposes.³

In a February 19, 2010 decision, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.

In an August 1, 2005 report, Dr. Robert Ho, an attending Board-certified neurosurgeon, discussed the history of appellant's cervical problems. He noted that she reported neck pain that extended into her left arm with weakness of hand gripping, but he indicated that electromyogram (EMG) testing of the arms was normal. Dr. Ho did not describe any particular condition of the left shoulder. Appellant also submitted a statement in which her counsel at the time argued that she did not seek care for her left shoulder condition at an earlier date because this pain was masked by her neck pain.

³ OWCP contacted the employing establishment and found that no job offer was made to appellant during the period December 8, 2004 to April 8, 2006.

In a July 12, 2010 decision, OWCP affirmed its February 19, 2010 decision finding that appellant had not established entitlement to disability compensation for the period December 8, 2004 to November 30, 2005.

Appellant requested reconsideration and submitted evidence that included January 13 and March 3, 2003 reports in which Dr. Fernando Diaz, an attending Board-certified neurosurgeon, discussed his treatment of her cervical condition during that time. She reported to him that she had pain that radiated from her neck to her left arm. In reports dated May 16, July 1 and 25, 2005 and February 2, 2006, Dr. Ho described his treatment of appellant's cervical condition. In his February 2, 2006 report, he mentioned her left shoulder rotator cuff tear, but he provided no opinion of how her work-related left shoulder condition affected her ability to work.

In a January 6, 2011 decision, OWCP affirmed the July 12, 2010 decision finding that the submitted medical evidence still did not show work-related disability for the period December 8, 2004 to November 30, 2005.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

ANALYSIS

OWCP accepted that appellant sustained a work-related left shoulder rotator cuff tear, disorder of bursae and tendons in the left shoulder and localized primary osteoarthritis of the left

⁴ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁵ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁶ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

shoulder. Appellant claimed that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.

The Board finds that appellant did not submit sufficient medical evidence to establish that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.

Appellant submitted several reports, dated between December 2005 and April 2006, in which Dr. Blasier, an attending Board-certified orthopedic surgeon, recommended various periods of disability. The submission of these reports does not establish her disability claim as none of the recommended disability periods covered the period December 8, 2004 to November 30, 2005. In a September 8, 2009 report, Dr. Blasier stated that appellant had advised him that the employing establishment did not offer her a job between December 8, 2004 and April 8, 2006 and therefore he posited that she was not employable during this period for practical purposes.⁷ However, he acknowledged that he first saw her on December 1, 2005 and therefore he had no direct knowledge of her condition before that date. The mere fact that the employing establishment did not offer appellant work for a given period would not show that she had disability due to her work-related left shoulder conditions for that period. Dr. Blasier did not provide a rationalized medical opinion that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.⁸

Appellant submitted several reports, dated between August 2005 and February 2006, in which Dr. Ho, an attending Board-certified neurosurgeon, discussed the history of her cervical problems. Dr. Ho noted that appellant reported neck pain that extended into her left arm with weakness of hand gripping, but he indicated that EMG testing of the arms was normal. In a February 2, 2006 report, he mentioned her left shoulder rotator cuff tear, but he did not provide an opinion that he had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.⁹

For these reasons, appellant did not submit rationalized medical evidence showing that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions and OWCP properly denied her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁷ OWCP called the employing establishment and conformed that no work was offered during this period.

⁸ Appellant submitted a November 1, 2005 report in which Dr. Ciullo, an attending Board-certified orthopedic surgeon, stated that she should consider such future treatments as surgery, physical therapy and activity modification. Dr. Ciullo did not provide a clear opinion on disability for the period December 8, 2004 to November 30, 2005.

⁹ Appellant submitted January 13 and March 3, 2003 reports in which Dr. Diaz, an attending Board-certified neurosurgeon, discussed his treatment of her cervical condition during that period. These reports do not relate to the period of disability claimed by appellant in the present case.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had disability for the period December 8, 2004 to November 30, 2005 due to her accepted left shoulder conditions.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board